IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 8-12-2006

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

S.A.No.1819 of 2002
and
CMP No.15372 of 2002

1.Dr.Alice George
2.The Rural Unit
For Health and
Social Affairs
rep. by its
Administrative Officer .. Appellants (Defendant)
K.V. Kuppam, Vellore DT.

vs

Lakshmi .. Respondent (Plaintiff)

Second appeal preferred under Sec.100 of the Code of Civil Procedure against the judgment and decree made in A.S.No.2 of 2002 dated 8.7.2002 on the file of the Principal District Judge, Vellore, confirming the judgment and decree in O.S.No.137 of 1999 dated 29.11.2001 on the file of the Subordinate Judge, Gudiyattam.

For Appellants : Mr.S.Krishna Srinivasan for
M/s S. Ramasubramanian & Associates

For Respondent : Mr.A.Anbarasu

JUDGMENT

This second appeal is preferred by the defendants whose defence plea was rejected by both the Courts below in a suit for recovery of damages of Rs.1,00,000/- by the respondent/plaintiff.

2.When the matter came up for consideration, notice was ordered. The respondent/plaintiff appears through her Counsel.

3.The plaintiff originally filed the suit for damages of Rs.1,00,000/- alleging that she has three children; that taking into consideration the family circumstances, she decided to undergo family planning operation with the third child a girl, which was born in 1987; that all the children were born in the second defendant's hospital, and thus, they were aware of the plaintiff's health and family circumstances; that on their instructions and on consultation with the the staff of the second defendant including the first defendant, she gave her consent to undergo the family planning operation immediately after the third child was delivered; that she

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came forward to undergo the family planning operation taking into consideration her deteriorating health and also the financial condition; that with the existing financial condition, the economy cannot allow any further expansion of the family, which would not only endanger her health, but also jeopardize the entire family, since the family was struggling; that Antipartun Sterilization by Laproscopy/Tubectomy was done by the first defendant in the branch of the second defendant hospital in March 1987; that the plaintiff and her husband were assured that there will not be any child birth; that only on that assurance, she underwent the said family planning operation; but, to her surprise, she became pregnant for the fourth time; that her health was too feeble to contemplate the termination of pregnancy; that in fact, she was advised by the defendants not to undergo any abortion; that the fourth child was born on 30.12.1990 at her house even before she could move to the hospital; that the said child had weakened her health; that she became virtually immobile and unable to attend even her personal works and needs such as cooking, house keeping, etc.,; that the husband of the plaintiff was the only earning member; that as a coolie, he was earning Rs.500/-; that the fourth child was therefore a result of the negligence of the first defendant in the course of employment; that under the circumstances, the second defendant was vicariously liable; that but for the failure of the operation, the plaintiff would not have been assured that there would not be any addition to the family; that not only the plaintiff's has suffered a setback in health, but also the entire family is suffering; that there is nobody to take care of the members of the family; that the fourth child birth has resulted due to the negligence of the defendants; that under the circumstances, they are jointly and severally liable to compensate the plaintiff; that she estimated the damages at Rs.1,00,000/- taking into consideration the present inflationary value of the rupee, cost of living and also the non-availability of any other source of income to the family of the plaintiff, and after issuing a notice, the plaintiff filed the suit for damages.

4.The defendants contested the suit vehemently by stating that the second defendant institution provides health services for children and mother and development services for the poor, youth and woman; that family services are also provided by them; that the first defendant is an unnecessary party to the claim; that the plaintiff has accepted the conditions for the said operation; that the aim of the programme is essentially a welfare programme; that all the patients are treated by the second defendant free of cost; that the operation which was done on the plaintiff, was the modified Pomeroys operation; that the risk of pregnancy following sterilization is higher in woman in whom the operation is done, in the immediate post delivery period as was done in this case; that the risk was carefully explained to the plaintiff and accepted by her in the consent form; that there are no records produced by her showing that she gave birth to a fourth baby, and under the circumstances, the suit was to be dismissed.

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5.The trial Court framed necessary issues, tried the suit and granted a decree in favour of the plaintiff awarding a compensation

of Rs.50,000/- payable by the defendants jointly and severally with interest. The aggrieved defendants took it on appeal. The first appellate Court on enquiry dismissed the same. Hence, this second appeal.

6.The learned Counsel appearing for the appellant inter alia would submit that both the Courts have decreed the suit erroneously; that the chance of recanalisation after the tubectomy operation exists; that when it takes place, it cannot be straightaway attributed to medical negligence, more particularly when the facts of the case did not justify such conclusion; that both the Courts should not have found that there was any medical negligence; that both the Courts have not appreciated the fact that what is expected of a Doctor is to exercise reasonable degree of skill and care as was done in the case of the respondent, which was amply supported by documentary evidence; that the trial Court had not considered the evidence at all, but relied on the pleadings of the respondent; that the first appellate Court has also followed the same; that sufficient evidence was placed through a qualified Doctor in the said field and also placed before the Courts, the medical journals to establish that there was no negligence whereas the respondent had not filed anything to disprove the expert's evidence or the medical journals to support her case; that the lower Courts without examining the weight of the evidence placed by the appellant proceeded to grant a decree; that it is pertinent to point out that it was not disputed by the respondent/plaintiff that the consent from which it would be evident that the chance of recanalization after sterilization was possible, was signed by her and the same was accepted by her; but, it was not considered by the lower Courts; that the first appellate Court has also not considered that the evidence of the plaintiff was clearly against her case; that the decision relied on by the plaintiff, accepted by the lower Court and reported in 2000(3) MLJ 98 is not applicable to the present facts of the case; that the respondent approached the appellants after a period of nearly three years from the date of operation, and moreover had come to the appellants at an advanced stage of pregnancy where termination of the fetus could have critically endangered her life; that if detected at an earlier stage, the same could have been avoided, and thus, the appeal requires an admission, since there exist substantial questions of law.

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7.The Court heard the learned Counsel for the respondent on the above contentions.

8.After hearing the learned Counsel on either side and looking into the materials available, this Court is of the considered opinion that no case is made out even for an admission of this appeal. Admittedly, the respondent/plaintiff who had already two children, gave delivery to the third child in the second respondent hospital on 23.2.1987, and she was instructed and advised to undergo family planning operation. It is also an admitted position that she underwent the family planning operation namely tubectomy operation, by following Pomeroys method which was done by the first appellant Doctor on 24.2.1987. It is also not in controversy that even after the family planning operation, she conceived the fourth child. When

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she came to the hospital, she was advised not to take any treatment for abortion; but, she must allow the fourth child to be born, and the child was actually born on 30.12.1990. Both the Courts have clearly pointed out that all these facts put forth in the plaint, were made evident by both oral and documentary evidence adduced before the Court. While the facts that the plaintiff had three children; that she underwent a family planning operation namely tubectomy, in a branch of the second appellant hospital; that it was the first defendant who did the same with the plaintiff's consent; and that she delivered the fourth child remain admitted, the plaintiff has brought forth the suit alleging that there was conception for the fourth child; that had the family planning operation namely tubectomy, was carefully done, she would not have conceived, and thus, it was negligence on the part of the first defendant Doctor; that also she was under the employment at the time of operation with the second respondent hospital, and thus, they were vicariously liable. What was all contended by the defendants before the lower courts and equally here also is that the operation which was done on the patient, was the modified Pomeroys method; that the same was done very carefully; that as per the analysis of the sterilization operation found in the international journals, there was an approximately 0.5% chance of pregnancy occurring after sterilization operation; that the risk of pregnancy is higher in woman in whom the operation is done, in the immediate post delivery period as was done in the instant case; that the risk was actually explained to the plaintiff and accepted by her also; that she has also signed in the consent form, and thus, there was no medical negligence on the part of the defendants, and hence, the plaintiff's claim was to be rejected.

9.The plaintiff sought for damages alleging that there was negligence on the part of the first defendant when the sterilization operation was performed on the plaintiff. The plaintiff who had already three children, underwent the family planning operation in view of her feeble health and also the poor financial condition. It is also clear that she underwent the operation only on instructions, advises and also consultation with the appellants/defendants. It was not the case of the defendants that without their advise she underwent the operation. It is quite clear from the materials available that even after the sterilization operation namely tubectomy, was performed on the plaintiff by the first defendant in the branch of the second defendant hospital, she conceived and delivered the fourth child. It was also clear that the plaintiff was advised not to take treatment for abortion since it would cause complications in her health. The only defence was that even after the sterilization operation, there was approximately 0.5% of pregnancy; and that though the family planning operation was carefully done, the plaintiff's case was one in which the pregnancy occurred after sterilization for which neither the Doctor who conducted the operation nor the hospital could be made liable. Both the Courts have clearly pointed out that before taking such a view that the plaintiff's case was one in which such pregnancy has occurred and which would fall within 0.5% of the case, a duty was cast upon the defendants to prove that the tubectomy family planning

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operation by Pomeroys method, was done carefully. But, the appellants/defendants have thoroughly failed to prove the same. Both the Courts have clearly pointed out that so long as the family planning operation done by the first defendant on the plaintiff, the subsequent conception of the fourth child by the plaintiff and the delivery of the same by her are all admitted position, it is for the medical person to prove that the operation was done carefully and without any negligence whatsoever. Having failed to do so, it cannot be inferred that it was properly done exercising care, and even then, the child was born, and even after the child was born, it could not be avoided. Once both the Courts have recorded a concurrent finding on the facts, this Court is of the considered opinion that nothing requires to make any disturbance over the same. Apart from that, the lower Courts have rightly followed the judgment of the Apex Court reported in (2000) 3 MLJ 98 (STATE OF HARYANA V. SANTRA), which speaks about the Doctor entering into a medical profession and a duty to act with reasonable degree of care and skill. This Court is unable to notice any question of law, much less substantial question of law to be formulated by this Court.

10.In the result, this second appeal fails, and the same is dismissed at the admission stage itself. No costs. Consequently, connected CMP is also dismissed.

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To:

1.The Principal District Judge
Vellore

2.The Subordinate Judge
Gudiyattam

3.The Record Keeper, VR Section,
High Court, Madras.

ONE CC TO M/S S. RAMASUBRAMANIAN AND ASSOCIATES, SR NO 61700

nsv/

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JRG(CO)

RP

Dt: 8-12-2006

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